



**DEPARTMENT OF LABOR**

**Office of Workers' Compensation Programs**

**20 CFR Parts 701, 702, 703, 725, and 726**

**RIN 1240-AA05**

**Technical Amendments**

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Final Rule.

**SUMMARY:** The Office of Workers' Compensation Programs is making technical amendments to reflect the dissolution of the Employment Standards Administration and the Secretary's delegation of authority to administer the Longshore and Harbor Workers' Compensation Act (and its extensions) and the Black Lung Benefits Act to the Director, Office of Workers' Compensation Programs. The amendments also add and update Internet addresses, and update cross-references to other regulations.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S-3524, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone: (202) 693-0031 (this is not a toll-free number). TTY/TDD callers may dial toll free 1-800-877-8339 for further information.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background of this Rulemaking**

Prior to November 8, 2009, the Secretary of Labor had delegated her statutory authority to administer the Longshore and Harbor Workers' Compensation Act and its extensions (LHWCA) and the Black Lung Benefits Act (BLBA) to the Assistant Secretary for the Employment Standards Administration (ESA). Secretary's Order 13-71, 36 FR 8755 (May 12, 1971). The Assistant Secretary, in turn, delegated authority to administer both programs to the Office of Workers' Compensation Programs (OWCP), one of ESA's sub-agencies.

On November 8, 2009, the Secretary dissolved ESA into its constituent components. See Secretary's Order 10-2009, 74 FR 58834 (Nov. 13, 2009). The Secretary then delegated her authority to administer the LHWCA and the BLBA directly to the Director, OWCP. Id.

To reflect this transfer of administrative authority, the Secretary issued a final rule changing the heading of 20 CFR chapter VI, which contains regulations implementing the LHWCA and the BLBA, from "Employment Standards Administration" to "Office of Workers' Compensation Programs." 75 FR 63379 (Oct. 15, 2010).

Numerous references to ESA remain in the regulatory text published in 20 CFR chapter VI. On January 18, 2011, the President issued Executive Order 13563, 76 FR 3821, calling upon agencies to review existing regulations and to revise outmoded provisions. In accordance with the Executive Order, this rule updates the regulations to reflect the Department's current organizational structure. The rule deletes all references to ESA and ensures that the regulations, in all respects, reflect that OWCP is the agency empowered to administer the LHWCA and the BLBA. The revisions do not change any substantive rule governing administration of these statutes.

ESA's dissolution has also necessitated revising several Internet addresses in these regulations, which previously included references to ESA in their URLs. This rule updates all Internet addresses in this chapter. In addition, this rule updates cross-references to other sections within Title 20 to correspond to changes in those other sections.

## **II. Statutory Authority**

Section 39(a) of the LHWCA (33 U.S.C. 939(a)) and sections 411(b), 422(a), and 426(a) of the BLBA (30 U.S.C. 921(b), 932(a), and 936(a)) authorize the Secretary of

Labor to prescribe rules and regulations necessary for the administration and enforcement of the LHWCA and the BLBA.

### **III. Rulemaking Analyses**

#### Administrative Procedure Act

The Department has not published a notice of proposed rulemaking for this rule. Under Administrative Procedure Act (APA) section 553(b)(A), 5 U.S.C. 553(b)(A), the Department finds that this rule is exempt from notice and comment rulemaking requirements because these revisions involve rules of agency organization, procedure, or practice. In addition, the Department finds good cause under APA section 553(b)(B), 5 U.S.C. 553(b)(B), to publish this rule without notice and comment procedures because the rule only reflects the delegation of administrative authority within the Department and makes minor clerical updates, and does not alter any substantive standard. For these same reasons, the Department finds that good cause exists for making the rule effective upon publication under APA section 553(d)(3), 5 U.S.C. 553(d)(3).

#### Regulatory Flexibility Act

This rule is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it is not subject to the APA's proposed rulemaking requirements.

Congressional Review Provisions of the Small Business  
Regulatory Enforcement Fairness Act (SBREFA)

This rule is not classified as a "rule" under SBREFA, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the right of non-agency parties (see 5 U.S.C. 804 (3)(C)).

Unfunded Mandates Reform Act

This rule is not subject to sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA, 2 U.S.C. 1501 et seq.) because it is not subject to the APA's proposed rulemaking requirements. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of the UMRA.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Executive Order 12866

This rule is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735).

#### Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 (64 FR 43255) regarding federalism, and has determined that it does not have "federalism implications." The rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729), to minimize litigation, eliminate ambiguity, and reduce burden.

#### **List of Subjects**

##### 20 CFR Part 701

Longshore and harbor workers, Organization and functions (Government agencies), Workers' compensation.

##### 20 CFR Part 702

Administrative practice and procedure, Claims, Health care, Health professions, Longshore and harbor workers, Reporting and recordkeeping requirements, Vocational rehabilitation, Whistleblowing, Workers' compensation.

##### 20 CFR Part 703

Insurance companies, Longshore and harbor workers, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Health care, Reporting and recordkeeping requirements, Vocational rehabilitation, Workers' compensation.

20 CFR Part 726

Black lung benefits, Insurance companies, Reporting and recordkeeping requirements, Workers' compensation.

For the reasons set forth in the preamble, amend 20 CFR parts 701, 702, 703, 725, and 726 as follows:

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITIONS AND USE OF TERMS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 et seq.; 33 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949-1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 10-2009, 74 FR 58834.

2. In § 701.301, remove and reserve paragraph (a)(3), and revise the first sentence of paragraph (a)(5) to read as follows:

§ 701.301 Definitions and use of terms.

(a) \* \* \*

(3) [Reserved]

(4) \* \* \*

(5) Office of Workers' Compensation Programs or OWCP  
or the Office means the Office of Workers' Compensation  
Programs, referred to in § 701.201. \* \* \*

\* \* \* \* \*

#### PART 702-ADMINISTRATION AND PROCEDURE

3. The authority citation for Part 702 is revised to  
read as follows:

Authority: 5 U.S.C. 301, 8171 et seq.; 33 U.S.C. 939;  
36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C.  
1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR  
1949-1953, Comp., p. 1004, 64 Stat. 1263; Secretary's Order  
10-2009, 74 FR 58834.

4. Revise the second sentence of § 702.413 to read as  
follows:

§ 702.413 Fees for medical services; prevailing community  
charges.

\* \* \* Where a dispute arises concerning the amount of  
a medical bill, the Director shall determine the prevailing  
community rate using the OWCP Medical Fee Schedule (as  
described in 20 CFR 10.805 through 10.810) to the extent  
appropriate, and where not appropriate, may use other state  
or federal fee schedules. \* \* \*

5. Revise § 702.414(a)(1)(iv) to read as follows:



§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) \* \* \*

(1) \* \* \*

(iv) the provider or service is not one covered by the OWCP fee schedule as described by 20 CFR 10.805 through 10.810.

\* \* \* \* \*

#### PART 703—INSURANCE REGULATIONS

6. The authority citation for Part 703 is revised to read as follows:

Authority: 5 U.S.C. 301, 8171 et seq.; 31 U.S.C. 9701; 33 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174; 3 CFR, 1949-1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 10-2009, 74 FR 58834.

7. Revise § 703.2(b) to read as follows:

#### § 703.2 Forms.

\* \* \* \* \*

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, D.C. 20210. They may also be obtained from OWCP district offices and on the Internet at <http://www.dol.gov/owcp/dlhwc>.

8. Revise the first sentence of § 703.202(b) to read as follows:

§ 703.202 Identification of significant gaps in State guaranty fund coverage for LHWCA obligations.

\* \* \* \* \*

(b) OWCP will identify States without guaranty funds and States with guaranty funds that do not fully and immediately secure LHWCA obligations and will post its findings on the Internet at <http://www.dol.gov/owcp/dlhwc>.

\* \* \*

9. Revise § 703.203(a)(1) to read as follows:

§ 703.203 Application for security deposit determination; information to be submitted; other requirements.

(a) \* \* \*

(1) Any carrier seeking an exemption from the security deposit requirements based on its financial standing (see § 703.204(c)(1)) must submit documentation establishing the carrier's current rating and its rating for the immediately preceding year from each insurance rating service designated by the Branch and posted on the Internet at <http://www.dol.gov/owcp/dlhwc>.

\* \* \* \* \*

10. Revise § 703.204(c)(1) to read as follows:

§ 703.204 Decision on insurance carrier's application;  
minimum amount of deposit.

\* \* \* \* \*

(c) \* \* \*

(1) Carriers who hold the highest rating awarded by each of the three insurance rating services designated by the Branch and posted on the Internet at <http://www.dol.gov/owcp/dlhwc> for both the current rating year and the immediately preceding year will not be required to deposit security.

\* \* \* \* \*

PART 725-CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF  
THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

11. The authority citation for Part 725 is revised to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 et seq., 902(f), 921, 932, 936; 33 U.S.C. 901 et seq., 42 U.S.C. 405; Secretary's Order 10-2009, 74 FR 58834.

12. Revise § 725.101(a)(17) to read as follows:

§ 725.101 Definition and use of terms.

(a) \* \* \*

(17) Division or DCMWC means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

\* \* \* \* \*

PART 726-BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE  
OPERATOR'S INSURANCE

13. The authority citation for Part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 et seq., 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 et seq.; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10-2009, 74 FR 58834.

14. Revise § 726.6 to read as follows:

§ 726.6 The Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (hereinafter the Office or OWCP) is that division of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his or her functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows:

Division of Coal Mine Workers' Compensation,  
Office of Workers' Compensation Programs, U.S.  
Department of Labor, Washington, D.C. 20210

15. Revise § 726.301(a) to read as follows:

§ 726.301 Definitions.

\* \* \* \* \*

(a) Division Director means the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, or such other official authorized by the Division Director to perform any of the functions of the Division Director under this subpart.

\* \* \* \* \*

16. Revise the second sentence of § 726.307(a) to read as follows:

§ 726.307 Form of notice of contest and request for hearing.

(a) \* \* \* The notice of contest shall be made in writing to the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, United States Department of Labor. \* \* \*

\* \* \* \* \*

Signed at Washington, D.C., this the 12<sup>th</sup> day of June, 2012.

Gary Steinberg

Acting Director, Office of Workers' Compensation Programs

Billing Code: 4510-CF-P

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